IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 29TH OCTOBER 2007 / 7TH KARTHIKA 1929

WA.No. 2519 of 2007

(AGAINST THE JUDGEMENT IN OP.29308/2001 Dated 23/05/2007)

APPELLANT/PETITIONER:

V.PADMANABHAN NAIR,
SUPERINTENDING ENGINEER (RTD),
"PRAYAG", T.C 15/139,
ALTHARA ROAD,
THIRUVANANTHAPURAM-695010.

BY ADV. SRI.S. EASWARAN

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SMT. K. MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2519 OF 2007

.....

Dated this the 29th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Challenging the correctness or otherwise of the orders passed by the learned single Judge in O.P.No. 29308 of 2001 dated 23rd May, 2007, the petitioner is before us in this appeal.

2. While disposing of this appeal, we will be referring to the appellant as the petitioner.

3. The petitioner, being aggrieved by the proceedings initiated under the provisions of the Kerala Public Accountants Act, 1963, by the District Collector, was before this Court in O.P.No. 29308 of 2001. The learned single Judge has allowed the Original Petition in part and has remitted the matter for fresh disposal by the concerned authorities.

4. The brief facts, for the purpose of disposal of this appeal, are as under: The petitioner is a retired Superintending Engineer. While, in service, he was holding the post of Executive Engineer in the Irrigation and Administration Department, he had released a sum of Rs. 1,37,871/- out of the three part bills of the contractor, who was entrusted with the subsequent works also.

5. The Chief Engineer of the Irrigation and Administration Department had taken a decision to recover a sum of Rs.1,01,605/- from the petitioner as the alleged loss sustained by the Government because of the irregular

release of the retention amount to the contractor by the petitioner.

6. Proceedings had been initiated sometime in the year 1993. But for various reasons, the same could not be completed and it is for the first time in the year 2001, the District Collector had issued Ext.P7 order to the petitioner. It is that order which is called in question by the petitioner before this court in O.P.No.29308 of 2001. Two contentions were raised by the petitioner before the learned single Judge. First one is that, he was not a Public Accountant as defined under the provisions of the Kerala Public Accountants Act, 1963 ('Act' for short) and secondly, without holding an enquiry, as required under sub-section (3) of Section 3 of the Act, the District Collector could not have passed the impugned order.

7. In so far as the second contention is concerned, the learned single Judge has granted relief to the petitioner. Now the only issue requires to be considered and decided by this court is, whether the petitioner is a Public Accountant or not, as defined under the provisions of the Act. Shri Easwaran, learned counsel appearing for the petitioner would contend that by no stretch of imagination, the petitioner can be called as a Public Accountant, since he was not holding any money which belongs to the Government, but belongs to the contractor . In aid of his submission, the learned counsel has taken us through the definition of 'Public Accountant' as defined under the provisions of the Act.

8. In our opinion, in order to answer the issue raised by the learned counsel, the definition of 'Public Accountant' as defined under the provisions

of the Act requires to be noticed. Section 2(b) of the Act defines the meaning of the expression 'Public Accountant', as under:

> *"Public Accountant' means a person who, by reason of being employed in the service of the Government or of any other authority or institution notified by the Government in this behalf from time to time in the Gazette, is entrusted with the receipt, custody, possession or control of any moneys or securities for money, documents or other property belonging to the Government or to any such authority or institution notified as aforesaid, or who, in his capacity as Government servant, or servant of any such authority or institution, is entrusted with the receipt, custody, possession or control of any moneys or securities for money, documents or other property belonging to any person or persons or to any institution for and on behalf of the Government or any such authority or institution, as the case may be. "*

9. In the instant case, the petitioner, before his retirement from service, was working as an Executive Engineer in the Irrigation Department. Certain works of the department had been entrusted with the contractor. He had raised three bills for payment, after completion of the works awarded under the contract. The first bill had been settled by the petitioner with the contractor. Since some other works were also entrusted with the contractor and since he had not completed the same, certain amounts which were due to the contractor, had to be retained by the Government. That amount has been released to the contractor by the petitioner. Being of the opinion that the petitioner could not have released the said amount, the authorities under the

Act have initiated appropriate proceedings .

10. Till the amounts are settled to the contractor by the State Government for the works done by the contractor, the money belongs to the State Government. That money was in the possession or in the custody of the petitioner. If that position is accepted, then the petitioner would certainly fall within the meaning of the expression 'Public Accountant'. In that view of the matter, we are not in a position to agree with the submissions canvassed by the learned counsel. Keeping this aspect of the matter in view, the learned single Judge, in our opinion, rightly has come to the conclusion that the petitioner is a Public Accountant. In that view of the matter, we do not see any error in the orders passed by the learned single Judge, which would call for our interference . Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

lk/DK.